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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,766	08/22/2003	Wanthida Kentner		8051

7590  
Robert S Kentner  
P O Box 203  
Lafayette, IN 47902

02/13/2007

EXAMINER

BALDWIN, GORDON

ART UNIT

PAPER NUMBER

1775

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/13/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/645,766

Applicant(s)

KENTNER ET AL.

Examiner

Gordon R. Baldwin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 2 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Young (Pat. No. 4,708,892).**

**Consider claim 1**, Young teaches an artificial flower (10) that contains a plurality of flexible frames (12) formed from flexible light weight strand like wires bent over to make loops (14). A plurality of elastic knitted fabric material pieces (16) are each formed from texturized synthetic yarns tautly stretched over each of the loops (14) to cover the loops thus making a plurality of petals in a cluster. (Col. 1, lines 55-64) The fabric used by Young is fabricated out a nylon, which is considered to be a synthetic fabric. (Col. 2 lines 3-5)

As for the transparent or multi-colored combinations of the fabric, according to In re Seid, 161 F. 2d 229, 73 USPQ 431 (CCPA 1947), the court found that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. The use of a variety of colors or a transparent versions of a synthetic fabric is not considered to be given a mechanical function in the claims of the applicant and is considered to be only ornamental purposes and is therefore not considered to be patentably distinguishable.

**Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Bouillot (Pat. No. 3,822,171)**

**Consider claim 1**, Bouillot teaches an artificial flower petal with a deformable support which is easily deformable yet is strong enough to maintain the deformed shape. (Col. 2 lines 41-45) The support material may be a thin wire of any suitable ductile material such as annealed iron and may be coated or uncoated with a protective varnish. (Col. 2 lines 45-48) The covering on the wire or strand element preferably is similar to the final color of the covering material. (Col. 2 lines 48-50) The covering material (4) may be any suitable stretchable material, i.e. a woven or knit synthetic material which is sufficiently extensible or elastic so that it conformed to the shape of the loop (2). Although the preferred stretchable materials are circular knits of various synthetic yarns which have been texturized by false twisting and covering material (4), which is sufficiently elastic or stretchable so that it conforms to the dimensions of the support loop may be utilized. (Col. 2 lines 50-60) Additionally, Bouillot teaches that the covering material (4) is stretched over a wire loop (2) is firmly held in place by a binding material (5) which may be any adhesive material. (Col. 2 lines 60-65)

As for the transparent or multi-colored combinations of the fabric, according to *In re Seid*, 161 F. 2d 229, 73 USPQ 431 (CCPA 1947), the court found that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. The use of a variety of colors or a transparent versions of a synthetic fabric is not considered to be given a

mechanical function in the claims of the applicant and is considered to be only ornamental purposes and is therefore not considered to be patentably distinguishable.

### ***Response to Arguments***

Applicant's arguments filed 6/30/2006 have been fully considered but they are not persuasive. The applicant is making the argument that both references used to reject the application only teach a two-dimensional representation of a flower or petal which the applicant's teach a three dimensional representation of a flower or petal. While this argument has been considered, since both Young (U.S. Pat. No. 4,708,892) and Bouillot (U.S. pat. No. 3,822,171) teach the making of an article that is to be used by florist or anyone desiring to make an artificial flower or petal. With this use being described in abstracts of both references, they are also considered to be three-dimensional items, since a two-dimensional item is flat with no depth, while the references describe folds and curved structures with depth as well as shading in figures 3 and 4, which are indicative of a three-dimensional form. Therefore, both of the references cited in the non-final action are considered to teach a three-dimensional form.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gordon R. Baldwin whose telephone number is (571)272-5166. The examiner can normally be reached on M-F 7:45-5:15.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GRB



**JOHN J. ZIMMERMAN**  
**PRIMARY EXAMINER**